

REMARKS

In response to the official action of June 29, 2004 we enclose a Terminal Disclaimer disclaiming the terminal portion of any patent granted on this application extending beyond the expiration date of U.S. Patent No. 6,488,633, assigned to the same assignee as the present application.

It is believed that the filing of the enclosed Terminal Disclaimer, overcomes the rejections of the original claims based on double patenting with respect to the prior U.S. Patent No. 6,488,633. Apart from filing this Terminal Disclaimer, it is not believed that any amendments are required with respect to the claims in order to avoid the remaining rejections presented in the Official Action of June 29, 2004.

One of the rejections was the rejection of "Claims 56 and 57" under 35 USC 101. However, there are no claims 56 and 57 in the present application (there only being Claims 1 – 34); moreover, no claims recite the "joint" or "hinge" referred to in this rejection. It is therefore assumed that the rejection was in error; if not, it is requested that the Examiner specifically identify the claims involved.

Claims 32 and 34 were rejected under 35 USC 102(b) as being anticipated by Muz U.S. Patent 4,907,594. It is noted that Claim 32 recites, among other features "said proximal end section including a sponge cushion".

With respect to this feature, the Examiner apparently refers to wall 6 and/or cap 1 which together define the pressure chamber 7, as illustrated in Fig. 2 of that patent. Both the elastic wall 6 and the cap 1 are described as consisting of "natural or silicon rubber" (column 4, lines 10 – 11).

It is submitted that to consider elastic wall 6 and/or cap 7 as “sponge rubber”, as done by the Examiner, would be an unreasonable interpretation of the above-cited recitation appearing in Claim 32, namely that the proximal end of the device includes “a sponge cushion”. A sponge cushion is one having a multiplicity of small air cells, pores or passageways. A construction as illustrated in Muz, including two elastic walls (6, 1) defining between them a pressure chamber (7), would hardly be considered by one skilled in the art as being a “sponge” construction.

It is submitted, therefore, that original Claim 32 clearly distinguishes over Muz under 35 USC 102.

Claim 34 depends from Claim 32, and therefore also clearly distinguishes over the cited reference for the same reasons, apart from the further features set forth in this dependent claim.

Claims 1, 2, 25, 26 and 30 – 33 were also rejected under 35 USC 102(b) as being anticipated by Goldberger et al U.S. Patent 4,685,464. It is submitted, however, that the Examiner’s application of this patent to these claims is also a clear mis-reading of the intention and scope of these claims.

Thus, Claim 1 recites, among other features, that the housing “includes at least three contiguous but separate sections”. With respect to this feature, the Examiner refers to “three contiguous portions” of the housing in Goldberger et al, namely the middle portion housing the sensor, and the two portions on opposite sides of the middle portion, as shown in Fig. 3. However, it is to be noted that these three so-called “portions” in Goldberger et al are actually different portions of the same pad (namely pad 70 on one side of the finger, and pad 80 on the opposite side of the finger). The recitation in Claim 1 of “at least three contiguous but separate sections”

of the hosing would hardly be considered by one skilled in the art as including, or anticipated by, the pads 70 and 80 in Goldberger et al.

It is submitted, therefore, that Claim 1, in its original wording, clearly distinguishes over Goldberger et al under 35 USC 102(b).

Claims 2, 25, 26, 30 and 31 all depend from Claim 1, and therefore also clearly distinguish over this reference under 35 USC 102(b) for the same reasons as discussed above, apart from the further features set forth in the respective dependent claims.

This leaves only independent Claim 32 and its dependent Claim 33. However, as discussed above, independent Claim 32 includes, among other features, the feature that the proximal end section includes "a sponge cushion". The comments set forth above with respect to the relevance of Muz U.S. Patent 4,907,594, to the recitation of this feature apply with equal force with respect to Goldberger et al. It is submitted, therefore, that Claim 32, and its dependent claim 33, are also allowable over this reference under 35 USC 102(b).

In view of the foregoing, it is believed this application is now in condition for allowance, and an early Notice of Allowance is therefore respectfully requested.

Respectfully submitted,



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